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09/982,562	10/17/2001	Florence Chatzigianis	ORA006 US	7865

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EXAMINER

ZHEN, WEI Y

ART UNIT PAPER NUMBER

2191

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,562

Applicant(s)

CHATZIGIANIS ET AL.

Examiner

Wei Y. Zhen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24, 26-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to the amendment filed on 7/3/2005.
2. Claims 1-24, 26-29 are pending.
3. The previous rejection under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention to claims 1-24, 26-29 are withdrawn in view of applicant's amendment.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-24, 27 are directed to non-statutory subject matter. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Specifically, Claims 1-24 recites steps of a method for releasing a product under development, these various steps (i.e. "storing in a computer memory...identifying one of said versions...") are steps that can be done by a person as a mental step or using pencil or paper which are directed merely to an abstract idea without a practical application and are not tangible. However, a claim recites "a computer implemented method" will make the claim statutory. In addition, claim 27 recites "a signal embedded in a carrier medium" which is directed to non-statutory subject matter because a signal embedded in a carrier medium is intangible, therefore,

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the claim is non-statutory since it is not being tangibly embodied in a manner so as to be executable.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-5, 7-8, 10-16, 21-24, 26-29 are rejected under 35 U.S.C. 102(a) as being anticipated by Reha et al, U.S. Patent No. 6,282,709.

As per claim 1, Reha discloses

storing in a computer memory a first association between a first version of a component of the product and a first time selected from a plurality of times that are to occur in future (col. 4 lines 35-42, lines 49-58, col. 10 lines 16-20), wherein each time in said plurality of times is separately from another time in said plurality of times by a common period (col. 10 lines 16-20) storing in said computer memory a second association between a second version of the component and a second time selected from said plurality of times (col. 4 lines 35-42, lines 49-58, col. 10 lines 16-20), subsequent to passage of at least one of said first time and said second time, identifying one of said versions as a release version (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58) by using said associations from said computer memory and depending on whichever one of said first time and second time occurred most recently in the past relative to current time

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and performing a build comprising at least said release version of said component (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 2, the rejection of claim 1 is incorporated and further Reha discloses the release version is different from the second version if the second time is yet to occur (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58).

As per claim 3, the rejection of claim 1 is incorporated and further Reha discloses the release version is the first version if the first time occur most recently in the past from among said plurality of times (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 4, the rejection of claim 1 is incorporated and further Reha discloses on passage of said first time...among the plurality of times (col. 4 lines 35-42, lines 49- 58).

As per claim 5, the rejection of claim 1 is incorporated and further Reha discloses wherein the association is stored in a record of a database (col. 4 lines 35-42, lines 49-58).

As per claim 7, the rejection of claim 1 is incorporated and further Reha discloses storing the address of each version (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67, col. 8 lines 5-42).

As per claim 8, Reha discloses copying. other components (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67, col. 8 lines 5-42).

As per claim 10, Reha discloses storing a label...in a version control system (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 11, Reha discloses storing an indicator. . .first time (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

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As per claim 12, Reha discloses storing for the first version. . .to be included (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 13, Reha discloses the release...milestone time (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 14, Reha discloses said first time is one...prior to said milestone time (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 15, Reha discloses receiving said first time...via a graphical user interface .; (Fig. 4 and col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 16, Reha discloses storing...first version (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58).

As per claim 21, Reha discloses after the second time. . .release version (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 22, Reha discloses storing a third...with the first version, storing a fourth...with the second version (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 23, Reha discloses said storing...second time (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

As per claim 24, Reha disclose said storing...on as an exception (col. 3 lines 55-67, col. 4 lines 35-42, lines 49-58, col. 5 lines 4-10. lines 57-67).

Claims 26-27 are rejected for the reason set forth in the rejection of claim 1.

Claim 28 is rejected for the reasons set forth in the rejection of claims 1,3,5,7.

Claim 29 is rejected for the reasons set forth in the rejection of claims 6, 9, 10-12.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 9, 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reha et al, U.S. Patent No. 6,282,709.

As per claims 6, 17, Reha does not explicitly disclose storing an identity of a person ...; responsible for development of each version/receiving . However, Official Notice is taken that storing/receiving an identity of a person responsible for development of software was well known in the art. Therefore, it would have been obvious to incorporate the teaching of the well-known knowledge into Reha because it provides a complete record of software development history that can be made available for later use, such as modification or consultation purpose.

As per claim 9, Reha does not explicitly disclose storing an identity of a bug that has been fixed in each version. However, Official Notice is taken that storing an identity of a bug that has been fixed in each version was well known in the art. Therefore, it would have been obvious to incorporate the teaching of the well-known knowledge into Reha because it provides a complete record of software development history that can be made available for later use, such as modification or consultation purpose.

As per claims 18, 19, 20, Reha does not explicitly disclose said plurality of times comprises at least one time during each week, each time in the plurality of times occurs on a predetermined day selected from a group of consisting of Tuesday, Wednesday, and Thursday or

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each time in the plurality of times occurs on Wednesday. Official Notice is taken that selecting a convenient time to comparing versions of software was well known in the art. Therefore, it would have been obvious to incorporate the teaching of the well-known knowledge into Reha because one would want to perform this function at a convenient time.

Response to Arguments

7. Applicant's arguments filed 7/3/2005 have been fully considered but they are not persuasive.

In the remark, applicant has argued substantially as followed:

- 1) Reha does not disclose that a release data that is to occur in future is to be stored as recited in claim 1.
- 2) Even assume Reha discloses a release date in future, there is no indication that Rhea's dates are separated from one another by a common period.
- 3) Reha does not disclose identification of most recent version is to be done based on a comparison with current time as in claim 1.
- 4) Examiner recited same text in Reha for rejection of claims 2-6, 10-14, 16, 21-24, 26, 27, 29 which does not take into account the individual limitation of the dependent claims. For example, for claim 5, examiner did not give patentable weight to "database" in claim 5; claim 13, Reha does not disclose "milestone time".
- 5) The Examiner rejected claims 6,9, 17-20 as being obvious over Reha's patent, after taking "Official Notice" about limitations recited in these claims. Even assuming the Examiner is correct in the existence of such features in the prior art, the Examiner provided no prior art

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citation for a motivation to add such features to Reha's invention. If any of these limitations is well known in the art, then applicants are entitled to evidence which proves the Examiner's position.

Examiner's response:

- 1) Examiner disagrees. Reha clearly discloses a release data that is to occur in future is to be stored at col. 10 lines 16-30 (software update manger is programmed to perform automatic periodic update which inherently require to set a time to be occur in future in order have the automatic periodic update be performed).
- 2) Examiner disagrees. Reha clearly teach that the update is scheduled to occurred periodically (occurred at a regular interval (separate by a common period)).
- 3) Examiner disagrees. Reha clearly teach this feature (see col. 3 line 65 to col. 4 line 7).
- 4) Examiner disagrees. Although the same text (a more general description) is cited for rejection to different claims, the details related to the general description could be found elsewhere in the same reference. For example, Reha disclose at col. 10 lines 16-30 (software update manger is programmed to perform automatic periodic update which inherently require to set a time (stored in a location)to be occur in future in order have the automatic periodic update be performed).
- 5) In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the

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knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner clearly provided the proper motivation to modify Reha. Applicant failed to point out the errors in the motivation statements. In addition, according to MPEP 2144.03, an inadequate traversal in the next response by Applicant is considered to be an admission that the relied upon assertion of Official Notice is prior art. It is noted that Applicant failed to adequately traverse the Examiner's assertion of Official Notice, therefore, these official notices are considered to be admission of prior art by the applicant.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

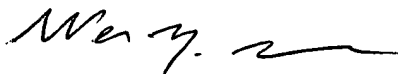
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wei Y. Zhen whose telephone number is (571) 272-3708. The examiner can normally be reached on Monday-Friday, 8 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wei Zhen


WEI Y. ZHEN
PRIMARY EXAMINER